(2020) 07 J&K CK 0038

In the Jammu And Kashmir High Court

Case No : Mac App No. 75 Of 2019, Civil Miscellaneous No. 4876, 4877 Of 2019

Reliance General Insurance Co. Ltd APPELLANT

Vs

Abdul Qayoom RESPONDENT

Date of Decision : 18-07-2020

Acts Referred:

Motor Vehicles Act, 1988 — Section 149, 166, 173

Citation : (2020) 07 J&K CK 0038

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Vishnu Gupta

Final Decision : Disposed Off

Judgement

Sanjeev Kumar, J

CM No. 4876/2019

For the reasons stated in the application, it is allowed. Resultantly, delay of 16 days in filing the appeal stands condoned.

Mac App No. 75/2019

1 This appeal under Section 173 of the Motor Vehicles Act filed by the Reliance General Insurance Company (hereinafter referred to as the 'insurer') is directed against the interim award (no fault liability award u/s 140 of M.V.Act) dated 08.03.2019 passed by the Motor Accident Claims Tribunal, Poonch (for short 'the Tribunal') in file No.70/Misc/Claim titled "Abdul Qayoom and another vs. Reliance General Insurance Co. and others.

2. The impugned interim award has been assailed on the ground that the insurer had raised a specific defence before the Tribunal that the offending vehicle, at the relevant point of time, was being used in violation of the terms and conditions of the insurance policy, in that, the deceased travelling in the offending vehicle was not covered by the policy which was only the Act Policy. It

is submitted that the Tribunal, without adjudicating upon the defence of the insurer, has fastened the liability to satisfy the interim award on the insurer and has, thus, defeated the right of the insurer to raise defence to the claim petition as provided under Section 149 of Motor Vehicles Act. Reliance in this regard is placed by the insurer, in particular, on the Division Bench Judgement of this Court rendered in the case of Oriental Insurance Co. Ltd vs. Som Raj and others, 2010 (1) SLJ 93.

3. Having heard learned counsel for the insurer and perused the record, I am of the view that the insurer is entitled to defend the claim petition on all permissible grounds as laid down in Section 149 of M.V. Act, disposal of application u/s 140 of M.V.Act, notwithstanding.

3. The plea of the insurer that the offending vehicle was insured under 'the Act only policy' and not by 'the comprehensive policy' is a question of fact which needs to be determined after trial to be held in the petition filed under Section 166 of M.V.Act. The Division Bench judgment of this Court rendered in Som Raj's case (supra) is distinguishable on facts. However, having regard to, prima facie, substance in the defence pleaded by the insurer in its objections before the Tribunal, it would be in the fitness of things to dispose of this appeal by providing that the disbursement of the amount deposited in the Registry of this Court on account of 'no fault liability' shall await the final outcome of the petition filed under Section 166 MV Act. Ordered accordingly.

4. This appeal is, accordingly, disposed of, leaving it open to the insurer to raise all the pleas, which, it has raised in this appeal, before the Tribunal and the same shall be tried and adjudicated upon by the Tribunal in accordance with law.